

FILED

JAN 02 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

GERALD ALBERT HEITKEMPER,)	CV 12-88-H-DLC-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
DR. RANTZ, DR. KOHUT, and MS.)	
SCHNEE,)	
)	
Defendants.)	
_____)	

United States Magistrate Judge Keith Strong entered Findings and Recommendation on November 19, 2012, and recommended dismissing Plaintiff Gerald Albert HeitKemper's Complaint because his allegations fail to state a claim upon which relief may be granted because he specifically alleges that he was provided treatment, testing and medication. Judge Strong found that these defects

cannot be cured by amendment. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

After review, Judge Strong found that the Complaint’s factual allegations are not sufficient to plausibly demonstrate that Defendants were deliberately indifferent to Plaintiff HeitKemper’s serious medical needs. Further, Judge Strong concluded that Mr. HeitKemper’s factual allegations, inclusive of the numerous documents attached to his Complaint, do not allege conduct that would, if proved, be deliberate indifference. After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Accordingly,

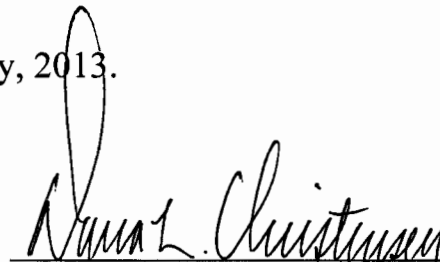
IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (doc. 6) are adopted in full. Plaintiff’s Complaint (doc. 2) is DISMISSED WITH PREJUDICE.

The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Mr. HeitKemper failed to state a claim upon which relief may be granted.

IT IS FURTHER ORDERED that the docket shall reflect that the Court certifies pursuant to Fed.R.App.P. 24(a)(3)(A) that any appeal of this decision would not be taken in good faith. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 2nd day of January, 2013.



Dana L. Christensen, District Judge
United States District Court